

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,  
  
Plaintiff  
  
-against-  
  
TIMOTHY FRAZIER,  
  
Defendant.

90 Cr. 913 (LAP)

ORDER

LORETTA A. PRESKA, Senior United States District Judge:

Before the Court is Defendant Timothy Frazier's motion to modify his sentence pursuant to 18 U.S.C. Section 3582(c)(2) and 3006A. (Dkt. no. 582.) The Government opposed (dkt. no. 588), and Defendant replied (dkt no. 590). For the reasons set forth below, the motion is granted to the extent of reducing Defendant's sentence to 120 months.

**I. Background**

On or about November 4, 1991, the Defendant pleaded guilty to conspiracy to violate the United States narcotics laws, in violation of Title 21, United States Code, Section 846. The Defendant pleaded guilty pursuant to a plea agreement in which the parties stipulated that the Defendant and his co-conspirators distributed at least one kilogram of heroin. The parties further stipulated that the Defendant's Total Offense Level after receiving a two-point reduction for acceptance of responsibility was 30 and that his Criminal History Category was

III. Accordingly, the Defendant's stipulated Guidelines range was 121-151 months imprisonment. See Plea Agreement (Exhibit A to dkt. no. 588).

On July 16, 1992, the Court held a sentencing hearing and adopted the parties' Total Offense Level and Criminal History Category calculations and the stipulated Guidelines Range of 121-151 months' imprisonment. See Judgment (dkt. no. 551-1, at 5). According to the Judgment, the Court adopted the factual findings in the PSR, which included that "[a]llthough the instant Indictment provides that Frazier was part of an organization which distributed heroin, 'crack' and cocaine," Frazier is only being held accountable for the organizations [sic] heroin sales as the evidence in this case provides that Frazier's role was limited to those sales." PSR at ¶ 184.

The Defendant's current projected release date is July 3, 2028.

## **II. Applicable Law**

Amendments 706 and 750 to the Sentencing Guidelines amended the applicable Guidelines to certain offenses involving cocaine base. Amendment 782 to the Guidelines, which became effective November 1, 2014, the Commission lowered the penalties for most drug offenses by reducing most offense levels on Section 2D1.1's Drug Quantity Table by two levels. This amendment affects not

only defendants sentenced under Section 2D1.1, but also any defendant sentenced under a guideline that used the Drug Quantity Table in a cross-reference. See, e.g., U.S.S.G. § 2D1.5 (CCE); U.S.S.G. § 2S1.1(a) (money laundering). In Amendment 788, the Commission decreed that Amendment 782 may be applied retroactively to lower the sentences of previously sentenced inmates. Thus, many defendants - potentially the Defendant in this case - have become eligible for a sentence reduction pursuant to the recent amendments.

The process for considering a Section 3582(c) motion is well established. As the Supreme Court has made clear, Section 3582(c) "does not authorize a . . . resentencing proceeding." Dillon v. United States, 560 U.S. 817, 825 (2010). Rather, it provides only for the possibility of "a limited adjustment to an otherwise final sentence" following a "two-step approach." Id. at 826-27.

"At step one, § 3582(c)(2) requires the court to follow the Commission's instructions . . . to determine the prisoner's eligibility for a sentence modification and the extent of the reduction authorized." Id. at 827. As to whether the defendant is eligible for any reduction, "§ 1B1.10(b)(1) requires the court to begin by 'determining the amended guideline range that would have been applicable to the defendant' had the relevant

amendment been in effect at the time of the initial sentencing.” Id. (quoting U.S.S.G. § 1B1.10(b)(1) (alteration omitted)). If, for any of a number of reasons, the amendment – here, the amendment to Section 2D1.1’s Drug Quantity Table – would not have altered the defendant’s sentencing range even if it had been applicable at the time of the defendant’s sentencing (for example, where the defendant was sentenced as a career offender, or where the bottom of the range was established by a statutory mandatory minimum sentence), then the defendant is not eligible for a sentencing reduction. See U.S.S.G. § 1B1.10(a)(2)(B). (“A reduction in the defendant’s term of imprisonment is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. § 3582(c)(2) if . . . an amendment . . . does not have the effect of lowering the defendant’s applicable guideline range.”)

Similarly, as to the extent of any possible sentencing reduction, “Courts generally may not reduce the defendant’s term of imprisonment . . . to a term that is less than the minimum of the amended guideline range” produced by the amendment. Dillon, 560 U.S. at 827 (internal quotation marks omitted). Although, at one time, there was ambiguity over whether a Court might reduce a defendant’s sentence to something less than the minimum of the amended Guidelines range if the defendant had

originally received a departure or variance below his original Guidelines range, the Commission has now made clear that even where a defendant originally received a below-Guidelines sentence, he nonetheless may not have his sentence reduced to one that is below the new, amended range; the sole exception being a defendant who previously received a departure based on substantial assistance. See U.S.S.G. § 1B1.10(b)(2)(A) ("Except as provided in subdivision (B) [relating to substantial assistance], the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range[.]"; United States v. Erskine, 717 F.3d 131, 137-41 (2d Cir. 2013) (recognizing that current version of Section 1B1.10 prohibits reductions below the bottom of the amended range, irrespective of departures or variances granted at the original sentencing).

"At step two of the inquiry," if the defendant has been determined to be eligible, and the extent of his eligibility has been established, the Court must decide in light of the applicable Section 3553(a) factors whether to grant a reduction "in whole or in part under the particular circumstances of the case." Dillon, 560 U.S. at 827. This decision is committed to the Court's discretion. See United States v. Mock, 612 F.3d 133,

137 (2d Cir. 2010) ("If, and only if, a defendant is eligible for a reduction in sentence under 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10, then the second step of the analytical framework set forth in Dillon requires the district court to consider any applicable § 3553(a) factors and determine whether, in its discretion, the reduction authorized by reference to the policies relevant at step one is warranted in whole or in part under the particular circumstances of the case.") (internal quotation marks omitted).

### **III. Discussion**

Because the Defendant was convicted of an offense involving heroin alone and was not convicted of an offense involving any quantity of cocaine base, Amendments 706 and 750 do not apply. Applying the Guidelines as amended by Amendment 782, the Defendant's total offense level is 28, resulting in an amended Guidelines range before any applicable mandatory minimum of 97-121 months. Because the Defendant is subject to a mandatory term of imprisonment of 120 months pursuant to his plea agreement and 21 U.S.C. § 841(b)(1)(A), his minimum applicable sentence is 120 months, for a revised amended Guidelines range of 120-121 months. See Section 5G1.1(c) ("sentence may be imposed at any point within the applicable guideline range, provided that the sentence . . . (2) is not less than any statutorily required

minimum sentence.") Because the Defendant's original sentence of 121 months is higher than the bottom of this amended Guidelines range, the Defendant is eligible for a reduction.

Section 1B1.10(b)(2)(A) and (B) provide, however, that a defendant's sentence may not be reduced any lower than the bottom of the amended Guidelines range unless the defendant was a Government cooperator who originally received a below-Guidelines sentence pursuant to a substantial assistance motion by the Government:

- (A) Limitation—Except as provided in subdivision (B), the court shall not reduce the Defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range determined under subdivision (1) of this subsection.
- (B) Exception for Substantial Assistance—If the term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the Defendant at the time of sentencing pursuant to a Government motion to reflect the Defendant's substantial assistance to authorities, a reduction comparably less than the amended guideline range determined under subdivision (1) of this subsection may be appropriate.

Here, the Defendant was not sentenced pursuant to a Government motion based on his provision of substantial assistance. Accordingly, he is eligible to have his sentence reduced to a term of imprisonment no lower than the bottom of the amended Guidelines range of 120 months.

In his reply, Defendant argues that "given the facts and circumstances of this case, there is no mandatory minimum term which constrains the Court's sentencing discretion, and the Court should impose a sentence without regard to such." (Dkt. no. 590 at 1.) He continues that:

Defendant was charged with an offense punishable under 21 U.S.C. 841(b)(1)(A), but he did not (and was not required to) admit to any specific drug quantity at the time of the guilty plea. In as much as there was no admission to drug quantity, no mandatory minimum term of imprisonment applies in this case. See, e.g., United States v. Gonzalez, 420 F.3d 111 (2d Cir. 2005).

Id.

However, in his plea agreement, Defendant stipulated that "Sentencing Guideline 2D1.1 is applicable to the offense charged in Count One of the Indictment. During the period covered by the Indictment, it was reasonably foreseeable to Timothy Frazier that he and his co-conspirators distributed at least one kilogram of heroin." (Exhibit A in dkt. no. 588 at 2.) Accordingly, Defendant is subject to a 120-month mandatory minimum under 21 U.S.C. Section 841 (b) (1) (A).



**IV. Conclusion**

Defendant's motion (dkt. no. 582) is granted to the extent of reducing his sentence to the 120-month mandatory minimum.

The Clerk of the Court shall close the open motion (dkt. no. 582) and mail the Defendant a copy of this order.

SO ORDERED.

Dated: New York, New York  
May 1, 2023

A handwritten signature in black ink, reading "Loretta A. Preska", written over a horizontal line.

LORETTA A. PRESKA

Senior United States District Judge